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EXAMINER				
ALI, MOHAMMAD M				
ART UNIT		PAPER NUMBER		
3744				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary

Application No.

10/519,989

Applicant(s)

IDE, HAJIME

Examiner

MOHAMMAD M. ALI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6-11, 17 and 18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Junichi et al (JP 2000-346524 A). Junichi et al disclose a wine storage apparatus (1) comprising a wine storage compartment (10/11/12) for storing wine, and a temperature control device (20/21/22) for controlling a temperature of the wine storage compartment; a target temperature within the limits of 5 to 20 degree C. (See Para [0017] of the enclosed translation and original disclosure in Japanese language Para [0026] for degree C portion). Junichi et al disclose the invention substantially as claimed as stated above including the control device repeatedly raises and lowers the temperature between the temperature limits as mentioned above having a target temperature within the limits. Alternatively, for a cooling device a target or predetermined temperature is the basic and inherent and to attain or remain around the target temperature the cooling cycles repeats by on when

the temperature reaches below the target or preset temperature and it goes off when it exceeds the preset or target temperature (this feature is inherent or obvious for a any cooling device while controlling a temperature for fluctuation of temperature for raising the temperature a preset point and for lowering the temperature a preset point and this is inherently accompanied by a preset cycle of operation, a preset band that means a defined preset temperature range and its allowance of variation). However, on the other hand separate disclosing a preset cycle, a preset temperature band and a preset variation pattern is an obvious choice of an individual skilled in the art since same feature is inherently present in a temperature control system.

Regarding claim 6, the control of temperature by increasing or lowering occurs in either of linear or curvilinear or stepwise.

Regarding claim 7 Junichi also controls a predetermined humidity control with the help of water trays (70) evaporator (33) and controller (20/21/22). Regarding claim 8, the Applicant admits that it is commonly believed that wine is ideally stored at a constant temperature of 13 degree C to 14 degree C and a constant humidity of about 65% (see first Para of background).

Regarding claim 9, the control system of Junichi et al., is capable of doing so. Regarding claim 10, claim 8 is being controlled at a constant temperature to have constant humidity of 65%.

Regarding claim 11, Junichi et al., disclose separate chambers for white wine and red wine and aging wine in three different chambers at different specified temperatures. See Fig. 1 and the enclosed translation.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-5, 1213, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Junichi et al., in view of Kawai et al., (US 6,705,098 B2). Junichi et al., disclose the invention substantially as claimed as stated above except a ban and a temperature control up to 25 degree C. Kawai et al., teach the control of temperature gradually changed by steps of predetermined amount/band of 0.5 degree C in every predetermined amount of time so as to gradually change from the previous control preset temperature (25 degree C. in this example) to the control preset temperature to be set (23 degree C. in this example at this time. See column 7, lines 6-11. Therefore, in view of the teachings of Kawai et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wine storage apparatus of Junichi et al., in view of Kawai et al., such that a temperature control band could be provided in order to control the temperature of the Junichi et al., with any desired temperature control band to obtain a predetermined temperature range 23 to 25 degree range. Regarding claim 5 having a temperature range of 22 degree C is obvious equivalent next temperature 23 degree C as taught by Kawai et al. as explained above. Regarding choosing a ban of 4 degree or 8 degree C, the teaching of Kawai et al., using

a band of 0.5 degree C would be recognized by an ordinary skill of art and the individual skilled in the art would be able to consider any suitable band limit to conveniently implement the teaching of Kawai et al.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Junichi et al in view of Ishi et al (US 4,678,603) and Forino (US 4,842,869). Junichi et al disclose the invention substantially as claimed as stated above except a cycle of 4 month and one year cycle period. Ishi et al teach the use of a maturation period of more than 3 months which is obviously equivalent to 4 months, Forino teach the use of fermentation period of 3 to 6 months for the alcoholic beverage by cooling and heating procedure in order to get a tasty alcoholic food. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wine storage apparatus of Junichi et al in view of Ishi and Forino such that a fermentation or maturation cycle of about for and 12 months could be provided in order to provide better test to the alcoholic beverage. .

Response to Arguments

Applicant's arguments filed 12/11/08 have been fully considered but they are not persuasive. The Applicant argues that Junichi does not disclose, and would not have rendered obvious, a wine storage apparatus comprising a temperature control device that controls a temperature of a wine storage compartment based on a target temperature, and that repeatedly raises and lowers the target temperature in the wine

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storage compartment in accordance with the preset cycle, a preset temperature band and a preset variation pattern.

The Examiner disagrees. Junichi et al disclose a wine storage apparatus (1) comprising a temperature control device (20/21/22) that controls temperature of a wine storage compartment (10/11/12) based on a target temperature averaging within a range 5 to 20 degree C (See Para [0018] of enclosed translation) and accordingly having a preset cycle to attain that target temperature or preset temperature with a band of cycle fluctuating the temperature between the range of 5 to 20 degree C. Therefore, the argument of the Applicant that Junichi does not disclose, and would not have rendered obvious, a wine storage apparatus comprising a temperature control device that controls a temperature of a wine storage compartment based on a target temperature, and that repeatedly raises and lowers the target temperature in the wine storage compartment in accordance with the preset cycle, a preset temperature band and a preset variation pattern is not correct.

The Applicant further argues that there is no evidence that raising or lowering the temperature in Junichi occurs according to a preset variation pattern.

The Examiner disagrees. Junichi et disclose a preset temperature variation pattern in which it raises temperature gradually from and near a lower temperature of 5 degree C and raises up to or near 20 deg C and then lowers the temperature gradually from or near the temperature 20 degree C to or near the temperature 5 degree C and repeats to attain an average target or preset temperature.

Therefore, the Applicant's argument that there is no evidence that raising or lowering the temperature in Junichi occurs according to a preset variation pattern is not correct.

The Applicant further argues that the Official Action fails to explain, with articulated reasoning or rational underpinning, why it would have been obvious to modify the temperature regulating mechanisms 20-22 of Junichi to operate in accordance with the preset cycle, a preset temperature band and a preset variation pattern.

The Examiner disagrees. Junichi et al disclose all these limitation in a single reference as mentioned above. However, for further clarification if needed, combination of art is always possible for obviousness rejection within the guide line of KSR appropriate articulated reasoning with rational underpinning to support the legal conclusion of obviousness. And this has been taken into account well established in a single reference as explained above.

Therefore, the Applicant's argument that the Official Action fails to explain, with articulated reasoning or rational underpinning, why it would have been obvious to modify the temperature regulating mechanisms 20-22 of Junichi to operate in accordance with the preset cycle, a preset temperature band and a preset variation pattern is not true.

Therefore, the rejections are ok. However, for mistakenly lack of rejections to claims 2 and 3 further non-final has been effected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOHAMMAD M. ALI whose telephone number is (571)272-4806. The examiner can normally be reached on maxiflex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl J. Tyler can be reached on 571-272-4808. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mohammad M Ali/
Primary Examiner, Art Unit 3744